

Buergel

Declaration

Exhibit 5

Page 1

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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KALOMA CARDWELL,)
Plaintiff,)
)
vs.) 19 Civ. 10256
) (GHW)

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DAVIS POLK & WARDWELL,)
THOMAS REID, JOHN BICK,)
WILLIAM CHUDD, SOPHIA)
HUDSON, HAROLD)
BIRNBAUM, DANIEL BRASS,)
BRIAN WOLFE, and JOHN)
BUTLER,)
Defendants.)
_____)

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REMOTE DEPOSITION OF
JOHN BICK
located in Quogue, New York
Tuesday, April 13, 2021

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(Transcript contains Confidential and
Highly Confidential portions -
confidentiality designations legend at
back of transcript)

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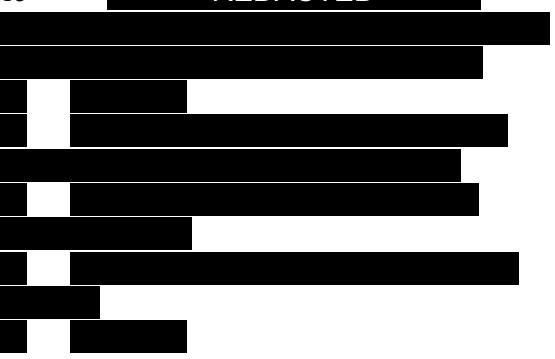
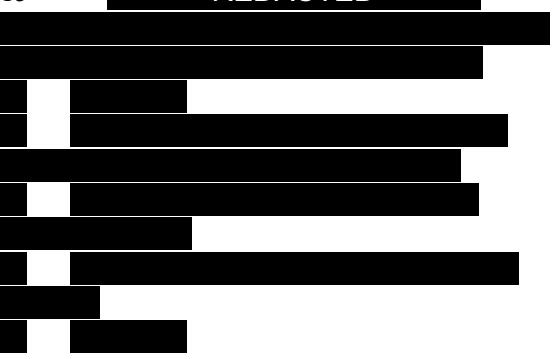
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Reported By:
CATHI IRISH, RPR, CRR, CLVS

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| | Page 2 | Page 4 | |
| 1 2 3 4 5 6 7 8 April 13, 2021 9 9:30 a.m. 10 11 Remote deposition of JOHN BICK, 12 with all participants appearing via 13 videoconference, before Cathi Irish, a 14 Registered Professional Reporter, 15 Certified Realtime Reporter, and 16 Notary Public of the State of 17 New York. 18 19 20 21 22 23 24 25 | | <p>1 2 JOHN BICK, called as a witness, 3 having been duly sworn by a Notary 4 Public, was examined and testified as 5 follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. JEFFRIES:</p> <p>8 Q. Mr. Bick, I'm going to ask you a 9 few questions and firstly, have you been 10 deposed before, sir?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. In an abundance of caution 13 I'm going to run through a few preliminary 14 things to keep in mind for this 15 proceeding. Firstly, I'm going to need 16 all of your answers to be verbal. Do you 17 understand, sir?</p> <p>18 A. Yes.</p> <p>19 Q. I'm going to ask that to the best 20 of your ability you wait until I finish 21 the question so that nobody is talking 22 over anybody and so the reporter is able 23 to get everybody's answers down in their 24 entirety.</p> <p>25 Do you understand that, sir?</p> | |
| 1 2 APPEARANCES: 3 4 JEFFRIES LAW 5 Attorneys for Plaintiff 6 1345 Avenue of the Americas 7 New York, New York 10019 8 BY: DAVID JEFFRIES, ESQ. 9 10 PAUL, WEISS, RIFKIND, WHARTON 11 & GARRISON 12 Attorneys for Defendants 13 1285 Avenue of the Americas 14 New York, New York 10019 15 BY: BRUCE BIRENBOIM, ESQ. 16 JONATHAN KIM, ESQ. 17 MARISSA DORAN, ESQ. 18 19 20 ALSO PRESENT: 21 ZACH CZERENDA, Veritext concierge 22 KALOMA CARDWELL 23 MICHAEL FLYNN 24 25 | Page 3 | <p>1 BICK</p> <p>2 A. Yes.</p> <p>3 Q. I'm going to ask that if at any 4 point in time you need a break in the 5 proceeding or you need to speak to your 6 attorney, that you answer the question 7 that's pending, if there is one, prior to 8 making such a request so that we get a 9 complete answer, question and then break 10 if that's indeed what's necessary, all 11 right, sir?</p> <p>12 A. Yes.</p> <p>13 Q. Also, if throughout the course of 14 the deposition you don't understand a 15 question that I've put to you, ask me to 16 rephrase it and I will do so.</p> <p>17 Do you understand that as well?</p> <p>18 A. Yes.</p> <p>19 Q. All right. With that said, I 20 believe you indicated that you've been 21 deposed before and what was the nature of 22 the previous proceedings in which you were 23 deposed, Mr. Bick?</p> <p>24 A. M&A transactions that I work on.</p> <p>25 Q. So were those depositions a part</p> | Page 5 |

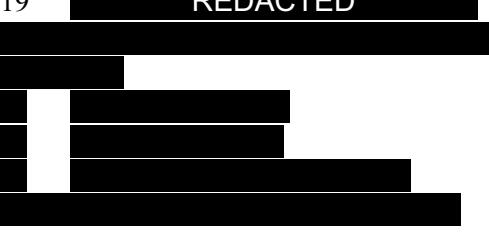
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| <p>1 BICK 2 responses; correct? 3 A. Yes. 4 Q. Did you review those prior to 5 today? 6 A. Yes. 7 Q. With respect to the court 8 documents that you mentioned, did you 9 review Mr. Cardwell's federal complaint 10 prior to today? 11 A. Yes. 12 Q. Are you aware of whether or not 13 there's one federal complaint by 14 Mr. Cardwell or more than one? 15 A. I am not aware. 16 Q. How many versions of 17 Mr. Cardwell's federal complaint did you 18 review prior to today? 19 A. I don't recollect. 20 Q. Are you aware of the fact that 21 there was a New York State Division of 22 Human Rights complaint made in this matter 23 by Mr. Cardwell? 24 A. Yes. 25 Q. Did you review that prior to</p> | <p>Page 10</p> <p>1 BICK 2 documents to counsel prior to today? 3 A. Again, I didn't provide them 4 anything. They looked on the computer for 5 e-mails and such. I did not provide them 6 any hard copy. 7 Q. Are you aware of whether or not 8 the items that you allowed counsel to 9 review that you just mentioned were in any 10 way supplied to counsel? 11 A. I don't understand the question. 12 Q. Did counsel take possession of 13 the items that you indicated were reviewed 14 in a digital format? 15 A. I do not know because I was not 16 part of the e-mail reviews digitally. 17 Q. So you yourself did not 18 affirmatively provide counsel with any 19 digital copies or ensure the forwarding of 20 any of the digital information to counsel 21 that you mentioned was reviewed; is that 22 correct? 23 A. Not to my recollection. 24 Q. And what type of documents are we 25 talking about? You mentioned e-mails?</p> |
| <p>1 BICK 2 today's testimony? 3 A. I have no recollection of 4 reviewing that complaint. 5 REDACTED REDACTED REDACTED REDACTED REDACTED. 12 Q. Did you yourself participate in 13 the gathering of any documents related to 14 this litigation prior to today? 15 A. Counsel came to see me and asked 16 for any documents that I had so that was 17 the extent of my participation. 18 Q. The documents -- with respect to 19 that inquiry, did you, in fact, provide 20 documents to counsel? 21 A. I had no hard copy to deliver to 22 counsel. All of my documents were e-mails 23 and digital that they could look at 24 through the systems. 25 Q. And did you provide those</p> | <p>Page 11</p> <p>1 BICK 2 What else? Would these have been other 3 documents that you yourself generated? 4 A. The only other thing I can think 5 of is the review forms. I did one interim 6 review of Kaloma which I put into the 7 system, and that would be the only other 8 thing aside from e-mails that I can think 9 of. 10 Q. Have you generated or authored 11 any memoranda to memorialize any of the 12 complaints or details related to this 13 litigation prior to today? 14 MR. BIRENBOIM: Objection to 15 form. 16 THE WITNESS: Not to -- 17 MR. BIRENBOIM: You can answer. 18 THE WITNESS: Not to my 19 recollection. 20 BY MR. JEFFRIES: 21 Q. Have you made any contemporaneous 22 notes with respect to Mr. Cardwell prior 23 to your testimony here today? 24 A. No. 25 Q. And as you sit here today, do you</p> |

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| <p>1 BICK</p> <p>2 these other e-mail addresses that you've</p> <p>3 mentioned; is that correct?</p> <p>4 A. I did not.</p> <p>5 Q. In 2014 through 2018, was your</p> <p>6 work e-mail address a part of any internal</p> <p>7 Listservs?</p> <p>8 A. I believe so, yes.</p> <p>9 Q. Do you recall which ones?</p> <p>10 A. I do not.</p> <p>11 Q. Was your work e-mail address a</p> <p>12 part of the Career Advisors Listserv?</p> <p>13 A. I do not know.</p> <p>14 Q. Well, do you recall or do you get</p> <p>15 e-mails sent from the Career Advisors</p> <p>16 Listserv?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. Would that have been the case</p> <p>19 during 2014 through 2018 as well?</p> <p>20 A. I believe, yes.</p> <p>21 Q. Is there any reason that you do</p> <p>22 not believe you would have received</p> <p>23 e-mails from the Career Advisors Listserv</p> <p>24 in 2014 through 2018?</p> <p>25 A. No.</p> | <p>Page 26</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 A. I do not know.</p> <p>3 Q. Do you have any reason to dispute</p> <p>4 that is the e-mail address?</p> <p>5 A. I do not.</p> <p>6 Q. You previously served as the head</p> <p>7 of Davis Polk's corporate department,</p> <p>8 global head of the mergers and</p> <p>9 acquisitions practice, and a member of the</p> <p>10 firm's three-person management committee;</p> <p>11 is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. I want to go through each of</p> <p>14 these positions.</p> <p>15 REDACTED</p>  | <p>Page 28</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 A. I do not know.</p> <p>3 Q. Do you have any reason to dispute</p> <p>4 that is the e-mail address?</p> <p>5 A. I do not.</p> <p>6 Q. You previously served as the head</p> <p>7 of Davis Polk's corporate department,</p> <p>8 global head of the mergers and</p> <p>9 acquisitions practice, and a member of the</p> <p>10 firm's three-person management committee;</p> <p>11 is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. I want to go through each of</p> <p>14 these positions.</p> <p>15 REDACTED</p>  |
| <p>1 BICK</p> <p>2 Q. And the Career Advisors Listserv</p> <p>3 uses the e-mail address</p> <p>4 cap.advisors.ny@davispolk.com; is that</p> <p>5 correct?</p> <p>6 A. I do not know.</p> <p>7 Q. Do you have any reason to dispute</p> <p>8 that the e-mail address I just read to you</p> <p>9 is the Career Advisors Listserv e-mail</p> <p>10 address?</p> <p>11 A. No.</p> <p>12 Q. Was your work e-mail address also</p> <p>13 a part of the NYMA Partners Listserv?</p> <p>14 A. I do not know.</p> <p>15 Q. Are you familiar with whether or</p> <p>16 not there is an NYMA Partners Listserv?</p> <p>17 A. I do not know the specific names</p> <p>18 of the Listservers. If you're referring</p> <p>19 to a Listserv for M&A partners in</p> <p>20 New York, there is one and I'm part of</p> <p>21 that.</p> <p>22 Q. Are you familiar with whether or</p> <p>23 not the e-mail address for the Listserv</p> <p>24 that you mentioned that you're a part of</p> <p>25 is nyma.partners@davispolk.com?</p> | <p>Page 27</p> <p>1 BICK</p> <p>2 Q. Was your departure from that</p> <p>3 position related to any formal</p> <p>4 investigation that occurred at Davis Polk?</p> <p>5 A. No.</p> <p>6 Q. Was your departure from that</p> <p>7 position related to any informal</p> <p>8 investigations that occurred at Davis</p> <p>9 Polk?</p> <p>10 A. No.</p> <p>11 Q. Did any individual or group of</p> <p>12 individuals ask you to step down from that position?</p> <p>13 A. No.</p> <p>14 Q. Can you explain why you're no</p> <p>15 longer the head of Davis Polk's corporate</p> <p>16 department?</p> <p>17 A. I had served three terms. Tom</p> <p>18 Reid, who was the managing partner and on</p> <p>19 the management committee with me, took a</p> <p>20 job at our client and was stepping down</p> <p>21 from the management committee. The three</p> <p>22 of us who were on the management committee</p> <p>23 at the time, Tom, Jim Rouhandeh and</p> <p>24 myself, we decided the best course of</p> | <p>Page 29</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 Q. Was your departure from that</p> <p>3 position related to any formal</p> <p>4 investigation that occurred at Davis Polk?</p> <p>5 A. No.</p> <p>6 Q. Was your departure from that</p> <p>7 position related to any informal</p> <p>8 investigations that occurred at Davis</p> <p>9 Polk?</p> <p>10 A. No.</p> <p>11 Q. Did any individual or group of</p> <p>12 individuals ask you to step down from that position?</p> <p>13 A. No.</p> <p>14 Q. Can you explain why you're no</p> <p>15 longer the head of Davis Polk's corporate</p> <p>16 department?</p> <p>17 A. I had served three terms. Tom</p> <p>18 Reid, who was the managing partner and on</p> <p>19 the management committee with me, took a</p> <p>20 job at our client and was stepping down</p> <p>21 from the management committee. The three</p> <p>22 of us who were on the management committee</p> <p>23 at the time, Tom, Jim Rouhandeh and</p> <p>24 myself, we decided the best course of</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 BICK 2 three-person management committee within 3 Davis Polk; correct? 4 A. Yes, we discussed that. 5 Q. When did you first start serving 6 as a member of the firm's three-person 7 management committee? 8 A. As I said previously, 2011. 9 Q. How did it come to pass that 10 you -- well, how did it come to pass that 11 you were a member of the three-person 12 management committee, was that previously 13 a part of your position as the head of the 14 corporate group? 15 MR. BIRENBOIM: Objection to 16 form. You may answer. 17 THE WITNESS: Could you rephrase 18 the question? I don't understand the 19 question. 20 BY MR. JEFFRIES: 21 Q. Is there any similarity between 22 the roles of head of the corporate group 23 and the position of the three-person 24 management committee, are those the same 25 roles or separate?</p> | <p style="text-align: right;">Page 36</p> <p>1 BICK 2 investigation? I'm not sure I would 3 view it as an investigation. I don't 4 understand. 5 BY MR. JEFFRIES: 6 Q. Let's step back a little bit 7 then. 8 Based on your experience and 9 knowledge of firm policies and procedures, 10 what type of investigation, if any, does 11 Davis Polk undertake with respect to a 12 claim of discrimination? How is such a 13 claim handled? 14 A. If we become aware of a 15 complaint, we work with lawyers in the 16 general counsel office, sometimes with 17 outside counsel, and we review the matter. 18 Q. Who is responsible for 19 undertaking that review? 20 A. If it's a complaint regarding 21 discrimination or harassment, it would be 22 the management committee working with the 23 general counsel office and outside counsel 24 sometimes. 25 Q. And what role would the</p> |
| <p style="text-align: right;">Page 35</p> <p>1 BICK 2 A. They are one and the same. I am 3 on the management committee and my title 4 on the management committee is global head 5 of corporate. That was a specific spot at 6 the time and that's what I was elected to. 7 Q. Did Davis Polk investigate any 8 complaints of discrimination, harassment 9 or retaliation between the years of 2014 10 and 2018? 11 A. Apart from Kaloma Cardwell, I 12 have no other recollection of any other 13 such complaint. 14 Q. Based on your position as -- 15 based on the positions that you've 16 mentioned holding relative to firm 17 management, are you aware of whether or 18 not the firm initiated an investigation 19 based on the complaints made by 20 Mr. Kaloma Cardwell in relation to his 21 employment between the years of 2014 and 22 2018 at Davis Polk? 23 MR. BIRENBOIM: Objection to 24 form. You can answer the question. 25 THE WITNESS: How do you define</p> | <p style="text-align: right;">Page 37</p> <p>1 BICK 2 management committee itself play within 3 that process? 4 A. We're making decisions for the 5 firm. 6 Q. What steps in an investigation 7 such as the type that we described, what 8 would the steps be that the management 9 committee weighs in on, what kind of 10 decisions would be made, what would the 11 steps be? 12 A. It's a little vague. I couldn't 13 site categorically each and every step we 14 take. As I said, we consult with general 15 counsel, we follow their lead in how they 16 would ask questions or do an 17 investigation, if necessary, and if they 18 need input from us or any particular 19 decisions, we do so. 20 Q. So I think that we're both in 21 agreement as to the fact that an 22 investigation would require some type of 23 affirmative steps to be taken; correct? 24 It entails the undertaking of some 25 affirmative steps; correct?</p> |

10 (Pages 34 - 37)

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| <p style="text-align: right;">Page 78</p> <p>1 BICK - CONFIDENTIAL 2 THE WITNESS: Can you move it up 3 or down so I can see above it, if 4 that's what you're referring to? 5 MR. JEFFRIES: I'm going to need 6 you to move it down a little bit. 7 VERITEXT CONCIERGE: I'm sorry, 8 what am I doing? Mr. Bick has full 9 control here. 10 THE WITNESS: Okay, sorry. I'll 11 move it down. 12 BY MR. JEFFRIES: 13 Q. And again orienting you to 14 February 2, 2017 at 11:50 a.m. 15 A. That her response that Harold and 16 Brian are the staffing partners for third 17 years and more senior, that reference, 18 yes. 19 Q. Right. So it states, "The 20 staffing partners (currently Brian Wolfe 21 and Harold Birnbaum) handle staffing for 22 third years and more senior. The 23 automatic e-mail comes from the system as 24 me every Tuesday. Christine puts all 25 updates together in one chart, which gets</p> | <p style="text-align: right;">Page 80</p> <p>1 BICK - CONFIDENTIAL 2 associate, Harold Birnbaum and Brian Wolfe 3 were the two primarily responsible for 4 staffing Cardwell. Do you agree with 5 that? 6 A. Yes, the M&A group had two 7 staffing partners, Brian and Harold, and 8 so they would have been staffing generally 9 third-year associates and above. 10 Q. Who else, if anyone, was also 11 primarily responsible for staffing 12 third-years and those more senior? 13 A. Just those two. 14 Q. Going back to that time, what 15 would your position have been within the 16 M&A group? 17 A. At this point, I was still head 18 of the M&A group. 19 REDACTED </p> |
| <p style="text-align: right;">Page 79</p> <p>1 BICK - CONFIDENTIAL 2 sent to the staffing partners and me." 3 You see that language; correct? 4 A. Yes. 5 Q. Mr. Birnbaum became a staffing 6 partner in the firm's M&A group in the 7 summer of 2016; correct? 8 A. I don't know the precise date. 9 Q. Does that sound like the time 10 frame during which he became a staffing 11 partner? 12 A. Well, I would agree he's the 13 staffing partner at this time. 14 Q. And do you know when Mr. Cardwell 15 became a third-year associate? 16 A. It would have been sometime in 17 the fall of 2016, two years after he 18 started at the firm. 19 Q. Was he a member of the M&A group 20 at the time he became a third-year 21 associate? 22 A. Yes. 23 Q. Carolina Fenner claimed in her 24 e-mail to Mr. Cardwell that from the time 25 that Mr. Cardwell had become a third-year</p> | <p style="text-align: right;">Page 81</p> <p>1 BICK - CONFIDENTIAL 2 REDACTED 3 Q. In your role as the head of the 4 M&A group, did you have input or were you 5 entitled to have input in the staffing of 6 associates on different assignments? 7 A. Any partner can have input to the 8 staffing partners. There's dialogues all 9 the time. When new deals come in you talk 10 to the staffing partners and you give them 11 input as to your needs and who is 12 available. 13 MR. JEFFRIES: I'm now going to 14 turn to tab 3. I'd like to have tab 3 15 moved into evidence. 16 MR. BIRENBOIM: Mr. Bick, are you 17 okay, do you need a break? 18 THE WITNESS: I'm still okay, 19 Bruce. 20 MR. BIRENBOIM: Anyone else need 21 a break on our team? 22 MR. JEFFRIES: Here's what we'll 23 do. We'll take a break in a few 24 minutes. I'm just going to make it 25 through this next range of questions</p> |

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| <p style="text-align: right;">Page 106</p> <p>1 BICK - CONFIDENTIAL 2 Mr. Cardwell's performance reviews? 3 MR. BIRENBOIM: Objection to 4 form. 5 THE WITNESS: Harold's knowledge 6 would be derivative in the sense that 7 he would have been in the M&A partner 8 meetings where all associates are 9 reviewed, and he in theory was at 10 those meetings when Kaloma was 11 reviewed and heard the performance 12 review.</p> <p>13 BY MR. JEFFRIES:</p> <p>14 Q. What about with respect to 15 Ms. Fenner, would the same rationale apply 16 to Ms. Fenner with respect to her ability 17 or her derivative knowledge of 18 Mr. Cardwell's performance reviews?</p> <p>19 A. Generally representatives of 20 associate development, Renee, Carolina, 21 others would participate at review 22 sessions for associates. I don't know 23 whether Carolina was present on the day 24 that Kaloma received his review and heard 25 the review internally with the partners.</p> | <p style="text-align: right;">Page 108</p> <p>1 BICK - CONFIDENTIAL 2 A. Who worked with the firm's M&A 3 partners? 4 Q. Yourself, as the head of the M&A 5 group, you would have been working with 6 the M&A partners in a variety of 7 capacities; correct? 8 A. I'm sorry, David, what was the 9 time period you're talking about? 10 Q. October 2016 through March 2017. 11 A. Yes, I was head of the M&A group 12 and I would be working with partners in 13 that capacity.</p> <p>14 MR. JEFFRIES: You can take this 15 exhibit down, Zach.</p> <p>16 BY MR. JEFFRIES:</p> <p>17 Q. And in your capacity as the head 18 of the M&A group, you would have had as we 19 discussed, input with respect to staffing 20 during that period of time; correct?</p> <p>21 A. I was not responsible for 22 day-to-day staffing so generally I 23 wouldn't have been involved in these type 24 of staffing decisions. So you say I could 25 have input, yes, I could walk into</p> |
| <p style="text-align: right;">Page 107</p> <p>1 BICK - CONFIDENTIAL 2 Q. And based on the nature of the 3 e-mails that we've read from 4 Ms. Carolina Fenner with respect to the 5 staffing of Mr. Cardwell, you would agree 6 that Ms. Fenner was concerned as to the 7 lack of staffing that Mr. Cardwell was 8 receiving during the period of October 9 2016 through March 2017; correct?</p> <p>10 MR. BIRENBOIM: Objection, 11 foundation.</p> <p>12 THE WITNESS: I don't know if she 13 was concerned or not. I think she's 14 asked -- she knows that he has 15 capacity and is asking that he get 16 work but I don't know the state of her 17 mind.</p> <p>18 BY MR. JEFFRIES:</p> <p>19 Q. Well, she clearly thinks that he 20 should be staffed; correct?</p> <p>21 A. Yes, it would be great if we 22 could give him something, yes.</p> <p>23 Q. During the period of October 2016 24 through March 2017, you worked with the 25 firm's M&A partners; correct?</p> | <p style="text-align: right;">Page 109</p> <p>1 BICK - CONFIDENTIAL 2 Harold's office and ask, but my 3 interaction with staffing partners was 4 generally staffing on my matters.</p> <p>5 Q. But I think you would agree that 6 as a matter of practice based off of your 7 position as the head of the group, you had 8 input in -- you had the ability to have 9 input into the staffing assignments --</p> <p>10 A. You say as a matter of practice. 11 If I wanted to go in and talk to partners 12 about particular staffing, I could.</p> <p>13 Q. And during the period of October 14 2016 through March 2017, you worked with 15 the firm's M&A partners to staff 16 Mr. Cardwell differently than the firm's 17 white M&A associates, didn't you?</p> <p>18 A. I did not.</p> <p>19 Q. Did Mr. Cardwell's race in any 20 way contribute to you and the firm's M&A 21 partners staffing Mr. Cardwell differently 22 than the firm's white M&A associates?</p> <p>23 A. No, sir, it did not.</p> <p>24 REDACTED</p> |

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| <p style="text-align: right;">Page 110</p> <p>1 BICK - CONFIDENTIAL/HIGHLY CONFIDENTIAL 2 [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>9 BY MR. JEFFRIES:</p> <p>10 Q. And when you say until maybe 11 March time frame, what, if anything, did 12 you learn about the status of his billable 13 hours during March?</p> <p>14 A. That he had not had significant 15 billable hours consistent with the 16 document we reviewed previously.</p> <p>17 Q. How did that come to your 18 knowledge?</p> <p>19 A. Someone brought it to my 20 attention. I can't remember precisely 21 who.</p> <p>22 Q. Well, who would have been in a 23 position to bring that particular detail 24 to your attention at that time?</p> <p>25 A. Different people.</p> | <p style="text-align: right;">Page 112</p> <p>1 BICK - CONFIDENTIAL/HIGHLY CONFIDENTIAL 2 the staffing but I do know that he had 3 low billable hours.</p> <p>4 BY MR. JEFFRIES:</p> <p>5 Q. In keeping with what you're 6 stating, you would agree that between 7 October 2016 and March 2017, Mr. Cardwell 8 had low billable hours, right?</p> <p>9 A. Yes, during I believe December 10 and January, February, March, it would 11 have been low billable hours, yes.</p> <p>12 Q. In fact, alarmingly low billable 13 hours; correct?</p> <p>14 A. That's your characterization, not 15 mine.</p> <p>16 Q. Well, 14.1 billable hours in 17 December, you don't consider that low?</p> <p>18 A. I do consider it low.</p> <p>19 Q. Low on what spectrum, is it an 20 average amount of -- is there nothing 21 about him billing 14 hours in December 22 that would be alarming to you as the head 23 of the M&A group?</p> <p>24 A. I guess I object to the fact that 25 it would be alarming.</p> |
| <p style="text-align: right;">Page 111</p> <p>1 BICK - CONFIDENTIAL/HIGHLY CONFIDENTIAL 2 Q. Would that have been something 3 that was brought to your attention by the 4 staffing coordinators?</p> <p>5 MR. BIRENBOIM: Objection, calls 6 for speculation. You can answer.</p> <p>7 THE WITNESS: Any number of 8 people could have brought it to my 9 attention.</p> <p>10 BY MR. JEFFRIES:</p> <p>11 Q. So just to be clear, I'm speaking 12 about the period -- a period of October 13 2016 through March 2017 during which 14 Mr. Cardwell was a member of the M&A 15 group; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And accordingly, or 18 correspondingly rather, a period during 19 which as a member of the M&A group, 20 Mr. Cardwell was not staffed on matters by 21 the staffing coordinators of the M&A 22 group; correct?</p> <p>23 MR. BIRENBOIM: Objection to 24 form.</p> <p>25 THE WITNESS: I don't know about</p> | <p style="text-align: right;">Page 113</p> <p>1 BICK - HIGHLY CONFIDENTIAL 2 Q. How did you react to finding out 3 he billed 14 hours in December?</p> <p>4 MR. BIRENBOIM: Objection, form, 5 foundation.</p> <p>6 THE WITNESS: My reaction was we 7 needed to try to get him work.</p> <p>8 BY MR. JEFFRIES:</p> <p>9 Q. How did you react to the fact 10 that there were a series of months after 11 December and up to the period of March 12 2017 where Mr. Cardwell billed single 13 digits in hours?</p> <p>14 A. Well, I think it gets into the 15 issue of his performance and so I 16 understood what had happened and how it -- 17 why it was happening, but I knew it had to 18 be addressed and find him work.</p> <p>19 Q. With respect to your statement 20 about understanding what happened and why 21 it happened, what is it that you 22 understood happened that led to his 23 considerably low hours being billed 24 between December and March?</p> <p style="text-align: right;">REDACTED</p> |

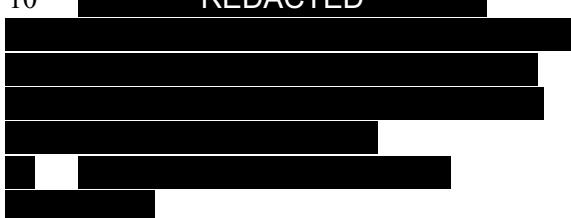
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| <p>1 BICK 2 REDACTED [REDACTED]</p> <p>8 Q. So it's your understanding and 9 your testimony that since Mr. Cardwell 10 began at the firm, he had been receiving a 11 series of performance reviews indicating 12 that he was a poor performer? 13 A. That he had performance issues 14 that he needed to work on. 15 Q. What was your understanding of 16 those performance issues that would have 17 contributed to him -- that would have led 18 to him not being staffed while he was an 19 associate in your practice group? 20 A. My recollection of the key points 21 that were communicated to him in different 22 performance reviews, including one that I 23 discussed with him, would be first that I 24 would think of as sort of time management 25 and process issues which would be</p> | <p>Page 114</p> <p>1 BICK - CONFIDENTIAL 2 based on -- so your position is that those 3 issues, those so-called issues are why he 4 wasn't staffed from December through 5 March? 6 A. Yes, it was related to his 7 performance over the last two years. 8 Q. And how do you know that? 9 A. Because I read his review files. 10 Q. How do you know that that is what 11 drove Mr. Wolfe's and Mr. Birnbaum's 12 thinking with respect to them refraining 13 from staffing him between October -- 14 between the period of October 2016 through 15 March of 2017? 16 MR. BIRENBOIM: Objection to 17 form, mischaracterizes the record, the 18 use of refrain. You can answer. 19 REDACTED [REDACTED]</p> |
| <p>1 BICK 2 responsiveness to calls and e-mails from 3 members of the team and clients, to 4 understanding sort of the work needed to 5 be done, making sure he asked all the 6 questions so that he could deliver a 7 better subset of work product when he 8 delivered it and not requiring additional 9 work by either the associates or the 10 partner in charge, just attention to 11 details and carelessness where sometimes 12 work would not be completed with the right 13 conforming changes or other items 14 addressed, and again, general lack of 15 understanding from time to time on work. 16 So this had been communicated to 17 him and was discussed in the fall and the 18 deal was that he was not keeping up with 19 the people in his immediate class of 2014 20 from a performance point of view and that 21 made it a bit more challenging for us to 22 staff him on the transactions that were 23 coming up relative to other associates who 24 had availability and time. 25 Q. And were any of those assessments</p> | <p>Page 115</p> <p>1 BICK - CONFIDENTIAL 2 REDACTED [REDACTED]</p> <p>13 MR. JEFFRIES: So at this time I 14 would like to move in tab 7. 15 (Exhibit 7, document Bates 16 labeled DPW_SDNY-000086138, marked for 17 identification.) 18 BY MR. JEFFRIES: 19 Q. So at the very bottom of the 20 page, do you see the e-mail -- 21 A. I'm just trying to get the 22 control. I'm going to increase the size 23 because I can't read it. Okay. 24 Q. I'm going to be drawing your 25 attention to the e-mail from you to</p> |

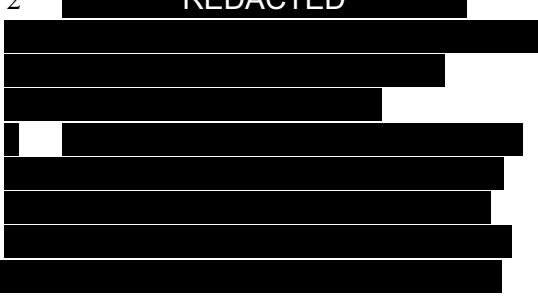
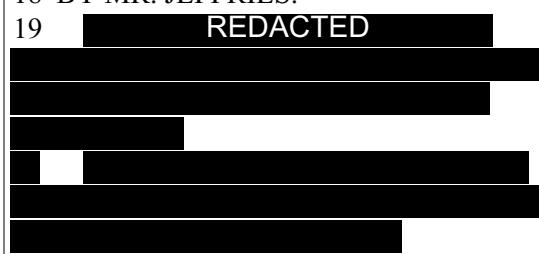
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| <p style="text-align: right;">Page 150</p> <p>1 BICK - CONFIDENTIAL 2 I have no recollection that Kaloma's 3 complaint was discussed at the firm 4 meeting during the week of February 5 5th. 6 BY MR. JEFFRIES: 7 Q. Well, what about conversations 8 about Mr. Cardwell generally? Did you 9 engage in any conversations about 10 Mr. Cardwell generally during the annual 11 meeting of 2018? 12 A. Outside the firm meeting, we had 13 some discussions regarding Kaloma in the 14 month of February. I don't recollect 15 whether it was during the week of the 16 annual meeting but it would have been just 17 a separate conversation, not associated 18 with the firm meeting. 19 Q. So with respect to those 20 conversations, who were they had with? 21 A. To my recollection, it would be 22 Tom Reid, the managing partner, Louis 23 Goldberg, Oliver Smith, both M&A partners, 24 and perhaps a few others I don't 25 recollect.</p> | <p style="text-align: right;">Page 152</p> <p>1 BICK - CONFIDENTIAL 2 here, roughly two weeks prior to this 3 e-mail chain, I know that Louis Goldberg 4 and Oliver Smith sat down and talked to 5 Kaloma about his performance and was 6 effectively giving him his review for the 7 2017 time period. 8 REDACTED  17 And so from that review until a 18 date in February, we were considering what 19 we would do, whether to continue trying to 20 get him work and staff him on transactions 21 or effectively tell him to go look for 22 another job. The conclusion was that he 23 should look for another job, that he 24 wouldn't be staffed on matters going 25 forward, so looking for another job would</p> |
| <p style="text-align: right;">Page 151</p> <p>1 BICK - CONFIDENTIAL 2 Q. Do you recall if you had 3 conversations with Harold Birnbaum about 4 Mr. Cardwell in February? 5 A. Harold might have been included 6 but I don't remember. 7 Q. Do you recall whether you had 8 conversations with Brian Wolfe about 9 Mr. Cardwell in February 2018? 10 A. He might have been included, too, 11 but I don't remember. 12 Q. Do you recall whether you had any 13 conversations with Daniel Brass about 14 Mr. Cardwell in February of 2018? 15 A. I do not think so. 16 Q. What about Len Kreyzin? 17 A. He could have been included but I 18 don't remember. 19 Q. What is it about the period -- 20 what is it about the period of February 21 2018 that sparks your recollection that 22 there were conversations about 23 Mr. Cardwell during that specific period 24 of time? 25 A. Well, in terms of the chronology</p> | <p style="text-align: right;">Page 153</p> <p>1 BICK - CONFIDENTIAL 2 be his -- what he should be doing. 3 He would get fully paid while he 4 was at the firm and that message was 5 delivered I think the week after this 6 annual meeting based on conversations we 7 had, and I believe it was Oliver and Louis 8 who went back and gave him that message. 9 Q. And how do you recall that in the 10 sequence of events? 11 MR. BIRENBOIM: Objection to 12 form. 13 THE WITNESS: Based on the 14 documents I reviewed regarding his 15 review and my recollection. 16 MR. JEFFRIES: Just off the 17 record for one moment. 18 (Discussion off the record.) 19 MR. JEFFRIES: At this point, I'm 20 going to introduce tab 3 into 21 evidence. 22 VERITEXT CONCIERGE: Would you 23 like me to pull tab 3 back up? We 24 introduced tab 3 at 11:13 a.m. 25 MR. JEFFRIES: Give me one</p> |

39 (Pages 150 - 153)

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| <p style="text-align: right;">Page 182</p> <p>1 BICK - CONFIDENTIAL 2 you've given into this line of questioning 3 based off of your prior response. 4 MR. JEFFRIES: The witness 5 indicated that there were items, that 6 there were incidents that he learned 7 about within the -- within his -- 8 within the process of him being aware 9 of the EEOC complaint and I'm asking 10 what other incident he learned 11 about -- 12 MR. BIRENBOIM: Wait a minute, 13 Mr. Bick. 14 THE WITNESS: Sorry. 15 MR. BIRENBOIM: I know exactly 16 what you're asking him and you're not 17 entitled to inquire what he learned 18 about from counsel in connection with 19 his meetings with counsel. So I 20 direct the witness not to answer to 21 the extent that question calls for the 22 disclosure of those discussions.</p> <p>23 BY MR. JEFFRIES:</p> <p>24 Q. Without asking and without giving 25 information about any advice given to you</p> | <p style="text-align: right;">Page 184</p> <p>1 BICK - CONFIDENTIAL 2 myself, thank you very much. 3 BY MR. JEFFRIES: 4 Q. Mr. Bick, what is the -- what is 5 BAG? 6 A. It's the Black Affinity Group. 7 Q. And what are affinity groups? 8 A. Affinity groups are different 9 groups of lawyers that get organized for 10 various functions such as for Black 11 associates, for Asian associates, for 12 women, parents, mothers, so they can form 13 different groups to meet and discuss 14 common issues relevant to the group and 15 other interests or as well as social 16 functions. 17 Q. So the BAG group is a Black 18 Affinity Group within Davis Polk; correct? 19 A. Yes. 20 Q. Would BAG have existed during 21 2014 through 2018? 22 A. I believe so but I'm not a 23 hundred percent sure when it started but I 24 believe it existed.</p> <p>25 REDACTED</p> |
| <p style="text-align: right;">Page 183</p> <p>1 BICK - CONFIDENTIAL 2 by counsel, Mr. Bick, aside from this 3 particular incident that's chronicled in 4 the e-mail, were there other incidents 5 that you learned about relative to 6 Mr. Cardwell at the time that you were 7 discussing the EEOC complaint that 8 Mr. Cardwell made? 9 A. I believe there were other 10 incidents but I learned about those where 11 counsel was present.</p> <p>12 MR. BIRENBOIM: Mr. Bick, to be 13 clear, if you learned something by -- 14 MR. JEFFRIES: Mr. Birenboim, 15 wait a minute. Mr. Birenboim.</p> <p>16 MR. BIRENBOIM: I'm trying to 17 help.</p> <p>18 MR. JEFFRIES: We're not going to 19 do that. This is neither an objection 20 nor anything appropriate for the 21 record.</p> <p>22 MR. BIRENBOIM: I was trying to 23 help you get the information.</p> <p>24 MR. JEFFRIES: I don't believe 25 that to be the case. I'll do it</p> | <p style="text-align: right;">Page 185</p> <p>1 BICK - CONFIDENTIAL REDACTED  9 Q. To be clear, did you ever hear 10 about Mr. Cardwell and other BAG members 11 meeting with the firm's diversity 12 committee and associate development 13 department at any time -- 14 MR. BIRENBOIM: Objection, asked 15 and answered. 16 Q. -- during the time he was 17 employed at the firm? 18 MR. BIRENBOIM: Objection, asked 19 and answered. You may answer again. 20 THE WITNESS: I learned about it 21 after the complaint was filed. 22 BY MR. JEFFRIES: 23 Q. Did you learn about -- what did 24 you learn about the meeting? 25 MR. BIRENBOIM: Objection.</p> |

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| <p style="text-align: right;">Page 194</p> <p>1 BICK - CONFIDENTIAL 2 conversations. I don't know the precise 3 meetings or the actual conversations, but 4 management committee knew about the 5 meeting with Kaloma and general counsel 6 was involved at some juncture here. 7 Q. And how did they know about that 8 meeting with Kaloma? 9 MR. BIRENBOIM: Objection to 10 form. 11 THE WITNESS: Tom had a follow-on 12 meeting, everyone was informed and 13 again, Kaloma took his month off and I 14 was really focusing on coming up with 15 a work plan for when he returned. 16 BY MR. JEFFRIES: 17 Q. When you say everyone involved, 18 who are you talking about? 19 A. People from the general counsel's 20 office, the management committee, Jim, Tom 21 and myself. Sharon was I think involved 22 and knew what was going on. 23 Q. Were there any M&A partners that 24 were involved in the discussions that lead 25 up to this meeting?</p> | <p style="text-align: right;">Page 196</p> <p>1 BICK - CONFIDENTIAL 2 them. 3 Q. Was it possible you communicated 4 information to the staffing partners about 5 the meeting with Tom? 6 MR. BIRENBOIM: Objection, calls 7 for speculation. You may answer. 8 THE WITNESS: I just don't know. 9 BY MR. JEFFRIES: 10 REDACTED  16 Q. So is it your testimony that in 17 2016, you had no information or no 18 knowledge about a meeting between Sheila 19 Adams, Kaloma Cardwell and Tom Reid? 20 A. I have no recollection of 21 discussing that dinner in prior periods. 22 Q. Did you come to learn that during 23 that dinner with Tom Reid and Sheila 24 Adams, Mr. Cardwell discussed topics 25 related to diversity and inclusion at</p> |
| <p style="text-align: right;">Page 195</p> <p>1 BICK - CONFIDENTIAL 2 A. Not with respect to the meeting 3 with Tom but as I was focusing on a work 4 plan, just to get him work down the road, 5 I was going to be talking to some of the 6 M&A partners in connection with that 7 effort. 8 Q. And which M&A partners did you 9 intend to speak to? 10 A. Certainly the two staffing 11 partners. I told Brian and Harold, and 12 during the course of the discussions I 13 reached out to a few partners. I don't 14 know that I have a complete list about 15 their willingness to work with Kaloma on 16 some of their matters. 17 Q. Since Mr. Cardwell had expressed 18 concerns about staffing, did you tell the 19 staffing partners about the meeting with 20 Tom? 21 A. I have no actual recollection of 22 specifically talking about that with them. 23 My recollection again is talking about a 24 work plan and how to get Kaloma work. 25 That was the discussion I was having with</p> | <p style="text-align: right;">Page 197</p> <p>1 BICK - CONFIDENTIAL 2 Davis Polk? 3 MR. BIRENBOIM: Objection to the 4 extent it calls for the disclosure of 5 conversations with counsel. Otherwise 6 you can answer. 7 THE WITNESS: I have no 8 recollection of the substance of the 9 discussions at that dinner. 10 BY MR. JEFFRIES: 11 Q. Did the discussions about that 12 dinner come up in relation to 13 conversations about the EEOC complaint 14 that Mr. Cardwell filed against Davis 15 Polk? 16 MR. BIRENBOIM: Same caution, any 17 discussions or information learned 18 from counsel, I would direct the 19 witness not to answer. If you learned 20 it from reading Mr. Cardwell's 21 complaints, you certainly can testify 22 about that. 23 THE WITNESS: I have no 24 substantive recollection. 25 MR. JEFFRIES: I ask that tab 10</p> |

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| <p style="text-align: right;">Page 198</p> <p>1 BICK - HIGHLY CONFIDENTIAL 2 be moved into evidence. 3 (Exhibit 12, document Bates 4 labeled DPW_SDNY-000099560, marked for 5 identification.) 6 BY MR. JEFFRIES: 7 Q. Do you see the item that's been 8 placed into evidence? 9 A. Yes. 10 Q. Can you make it any larger? Why 11 don't we make it larger. 12 Do you see that that's an e-mail 13 from Rocio Clausen and Carolina Fenner to 14 Mr. Cardwell on September 8, 2016? 15 A. Yes, I'm just reading it. 16 (Witness perusing document.) 17 Yes, I've read it now. 18 Q. Do you see where the e-mail 19 states, "I hope you are well. Would you 20 be able to assist the credit group (mainly 21 JW Perry and Frank Manley) with some KYC, 22 organization, materials, resolution, 23 certificates, et cetera, for a [REDACTED] 24 deal closing later this month?" 25 Do you see that?</p> | <p style="text-align: right;">Page 200</p> <p>1 BICK - HIGHLY CONFIDENTIAL 2 manager in the associate development 3 department; correct? 4 A. Yes. 5 Q. And what would your role have 6 been at that point in time, in September 7 of 2016? 8 A. I was on the management committee 9 and at that point I was head of the M&A 10 group. 11 Q. At that point in time, 12 Mr. Cardwell would have been an associate 13 in the management -- in the M&A 14 department; correct? 15 A. Yes. 16 Q. And did you ever learn of an 17 attempt to staff Mr. Cardwell while he was 18 one of your associates in the M&A 19 department in a -- with respect to an 20 assignment in the credit department? 21 A. Look, this happens with some 22 frequency where one group needs help and 23 they don't have sufficient resources, so 24 certainly within corporate that group will 25 reach out and ask for help from other</p> |
| <p style="text-align: right;">Page 199</p> <p>1 BICK - HIGHLY CONFIDENTIAL 2 A. I do. 3 Q. On or around September or October 4 in 2016, were you aware that Rocio Clausen 5 and Carolina Fenner had reached out to 6 Mr. Cardwell and attempted to staff him on 7 a credit assignment? 8 A. I was not aware of this staffing 9 request. 10 [REDACTED]  17 Q. You never observed any 18 discussions or you were never informed of 19 any discussions related to Ms. Clausen's 20 attempt to staff Mr. Cardwell on a credit 21 assignment in 2016? 22 A. No, something like this would not 23 have been brought to my attention. 24 Q. At this point in time in 25 September of 2016, Ms. Clausen was a</p> | <p style="text-align: right;">Page 201</p> <p>1 BICK - HIGHLY CONFIDENTIAL 2 practice groups and we do this all the 3 time. So I read this, this is a fairly 4 standard request and the reason Kaloma is 5 being asked is because he did a rotation 6 in credit so he has some training and 7 experience that would be useful to the 8 team working on this [REDACTED] transaction. 9 So from my vantage point reading this for 10 the first time, I think this is fairly 11 standard and not unusual. 12 Q. At any time were you aware that 13 Mr. Cardwell and Rocio Clausen had a 14 meeting about the staffing assignment? 15 A. I have no recollection of that 16 meeting, no. 17 Q. Do you have any reason to believe 18 that Mr. Cardwell questioned whether the 19 assignment or his hours were connected to 20 his race? 21 A. I did not hear any such 22 discussion or allegation. 23 MR. JEFFRIES: At this point in 24 time I'm going to ask that tab 11 be 25 moved into evidence.</p> |

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| <p style="text-align: right;">Page 202</p> <p>1 BICK - CONFIDENTIAL 2 VERITEXT CONCIERGE: I believe 3 tab 11 was moved into evidence at 4 1:22 p.m. Would you like me to pull 5 it up? 6 MR. JEFFRIES: Yes. 7 BY MR. JEFFRIES: 8 Q. With respect to this exhibit -- 9 we've already discussed the fact that in 10 this particular exhibit, the person 11 related to as John is yourself; correct? 12 A. I believe so, yes. 13 Q. And you see where it says that 14 Kaloma needs to be someone's project as 15 soon as possible? 16 A. Yes. 17 Q. I.e., get work and hours and 18 direct feedback? 19 A. Yes. 20 Q. During Mr. Cardwell's employment, 21 have you ever heard people describe 22 Mr. Cardwell as needing to be someone's 23 project? 24 A. No. 25 Q. To your knowledge, was</p> | <p style="text-align: right;">Page 204</p> <p>1 BICK - CONFIDENTIAL 2 REDACTED  11 Q. You mentioned that that belief 12 was in part formed by conversations with 13 others. Which others, which people are 14 you speaking about that contribute to that 15 assessment? 16 A. I spoke to Sophia as we discussed 17 earlier and I reviewed review files from a 18 whole bunch of lawyers regarding his 19 performance over the years. 20 Q. Anyone else? 21 A. In September, not to my 22 recollection, no. 23 Q. So the review files you mentioned 24 from other associates, do you know which 25 associates those review files were from?</p> |
| <p style="text-align: right;">Page 203</p> <p>1 BICK - CONFIDENTIAL 2 Mr. Cardwell made someone's project? 3 MR. BIRENBOIM: Objection to 4 form. 5 THE WITNESS: Not to my 6 recollection, no. 7 BY MR. JEFFRIES: 8 Q. Within the context of this 9 e-mail, what does it mean or what is being 10 communicated with respect to Kaloma 11 Cardwell being made someone's project? 12 MR. BIRENBOIM: Objection to 13 form, no foundation. It's not the 14 witness's e-mail. 15 THE WITNESS: I would be 16 speculating. You would have to ask 17 Sharon. 18 BY MR. JEFFRIES: 19 REDACTED </p> | <p style="text-align: right;">Page 205</p> <p>1 BICK - CONFIDENTIAL 2 MR. BIRENBOIM: Objection to 3 form, mischaracterizes the testimony. 4 THE WITNESS: Again I reviewed 5 lawyer feedback that was in his review 6 file, so that covered all lawyers, it 7 could be associates, it could be 8 counsel, it could be partners. 9 BY MR. JEFFRIES: 10 Q. And you believe that those 11 individuals describe Mr. Cardwell as a 12 poor performer at that time? 13 A. They identified performance 14 issues that needed to be addressed by 15 Kaloma going forward. 16 Q. Well, my question is whether or 17 not they described him as a poor 18 performer. 19 A. I don't recollect the use of the 20 precise phrase that you're using, poor 21 performer. But again, the issues that we 22 discussed of having issues with the 23 substantive work, maybe not understanding 24 the work assignment which led to working a 25 little bit longer than was contemplated on</p> |

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| <p style="text-align: right;">Page 222</p> <p>1 BICK - CONFIDENTIAL 2 when you became aware that Mr. Cardwell 3 asked the firm if he could view his 4 personnel file and performance reviews? 5 A. I do remember that he asked to 6 review the personnel files. 7 Q. And how did you become aware of 8 Mr. Cardwell's request? 9 A. I believe the request was made to 10 Sharon Crane and I learned about it 11 through her or derivatively through her. 12 Q. And did the firm indeed allow 13 Mr. Cardwell to see any of the documents 14 that were a part of his personnel file or 15 performance reviews? 16 A. I don't remember. 17 Q. Aside from being informed, aside 18 from the possibility or aside from being 19 informed by Ms. Crane about the request 20 being made by Mr. Cardwell, were you 21 updated on what, if any, action was taken 22 in regards to Mr. Cardwell's request? 23 A. I have no recollection of the 24 request or the outcome other than he made 25 that request.</p> | <p style="text-align: right;">Page 224</p> <p>1 BICK - CONFIDENTIAL 2 you've expressed based on? 3 MR. BIRENBOIM: Objection. 4 THE WITNESS: Look, it was a 5 policy that predicated my time so I 6 wasn't part of the original 7 discussion. 8 BY MR. JEFFRIES: 9 Q. Do you have any indication as to 10 whether or not that policy had changed in 11 any way from the time that it was put into 12 existence? You indicated that it predicated 13 you. Do you have any indication as to 14 whether or not there were any changes 15 within that policy that would have 16 extended to the time that you were -- or 17 that would have extended to the time 18 encompassing Mr. Cardwell's request to see 19 his file? 20 A. I'm not familiar with or don't 21 recollect any changes. There may have 22 been changes that are required by law but 23 I'm not familiar with that either. 24 Q. So what was your understanding 25 with respect to why Mr. Cardwell was</p> |
| <p style="text-align: right;">Page 223</p> <p>1 BICK - CONFIDENTIAL 2 Q. Do you know if it was against 3 firm policy to allow Mr. Cardwell to see 4 any documents that were a part of his 5 personnel file or performance reviews? 6 A. I do know that our policy for 7 lawyers was not to give them their 8 personnel file if they requested it. 9 Q. You said that the policy was not 10 to give the associate their performance 11 file or their personnel file or 12 performance reviews; is that correct? 13 A. That was our policy not to give 14 those files out to lawyers. 15 Q. What about viewing those items, 16 what's your understanding of the firm's 17 policy that was in place during the time 18 of Mr. Cardwell's employment with respect 19 to allowing an associate to view their 20 personnel file or performance reviews? 21 A. What I answered previously that 22 our policy we would not give or allow them 23 to review their personnel policy -- 24 personnel file. 25 Q. And what is that position that</p> | <p style="text-align: right;">Page 225</p> <p>1 BICK - CONFIDENTIAL 2 denied the ability to see his performance 3 reviews and personnel files? 4 MR. BIRENBOIM: Asked and 5 answered. You can answer. 6 THE WITNESS: I was going to say 7 as I've previously answered, our 8 policy was not to allow lawyers to see 9 or have their personnel files, so that 10 was the reason why he didn't get his. 11 BY MR. JEFFRIES: 12 Q. Was Mr. Cardwell's request the 13 first time that an associate requested to 14 see his or her performance reviews, to 15 your knowledge? 16 A. I don't know prior requests. 17 MR. JEFFRIES: Zach, can we take 18 down Exhibit 10? 19 BY MR. JEFFRIES: 20 REDACTED  </p> |

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| <p>1 BICK - CONFIDENTIAL 2 REDACTED [REDACTED] [REDACTED] [REDACTED]</p> <p>8 Q. And is it your recollection that 9 Mr. Cardwell asked for the leave of 10 absence?</p> <p>11 A. That is my understanding, yes.</p> <p>12 Q. And why do you have that belief?</p> <p>13 MR. BIRENBOIM: Objection to 14 form.</p> <p>15 THE WITNESS: In connection with 16 preparation. I read e-mails at the 17 time.</p> <p>18 BY MR. JEFFRIES:</p> <p>19 Q. With respect to the e-mails that 20 you read in connection with that 21 development, who were those e-mails from?</p> <p>22 A. I don't remember the person. It 23 was someone in HR because he had been sort 24 of nonresponsive to Phillip Mills in 25 connection with an M&A transaction that he</p> | <p>Page 226</p> <p>1 BICK - CONFIDENTIAL 2 to -- how did the M&A group respond to 3 Mr. Cardwell's request for a leave of 4 absence?</p> <p>5 A. I don't think there was any M&A 6 group response.</p> <p>7 Q. Is it normal for an associate to 8 request a leave of absence?</p> <p>9 MR. BIRENBOIM: Objection to 10 form.</p> <p>11 THE WITNESS: Yes, I think 12 associates and lawyers generally 13 request a leave of absence from time 14 to time based on personal 15 circumstances.</p> <p>16 BY MR. JEFFRIES:</p> <p>17 Q. What's the firm's position on 18 mandating nonvoluntary leave for 19 employees?</p> <p>20 MR. BIRENBOIM: Objection to 21 form.</p> <p>22 THE WITNESS: Mandating 23 non-mandatory leaves? Implying what?</p> <p>24 BY MR. JEFFRIES:</p> <p>25 Q. You indicated Mr. Cardwell</p> |
| <p>1 BICK - CONFIDENTIAL 2 was working with and given the lack of 3 response which extended over 24 hours, we 4 became concerned about where he was and 5 what was happening. So multiple people 6 reached out to him, including HR, and my 7 recollection is he responded to HR and 8 flowing out of that was that he had to 9 take some time off.</p> <p>10 Q. Is it your understanding that the 11 person that reached Mr. Cardwell was the 12 one that received the request from 13 Mr. Cardwell to take a leave?</p> <p>14 A. I don't know specifically but I 15 do believe that the person at HR who was 16 reaching out, he responded to her, but I 17 don't know the whole series of 18 conversations between her and Kaloma 19 Cardwell.</p> <p>20 Q. Do you remember anything else 21 about this event?</p> <p>22 A. No, I think I've described what I 23 remember but if you have any specific 24 questions, I'm happy to answer.</p> <p>25 Q. How did the M&A group respond</p> | <p>Page 227</p> <p>1 BICK - CONFIDENTIAL 2 requested the leave of absence; correct?</p> <p>3 A. I thought he did. That's my 4 recollection.</p> <p>5 Q. Well --</p> <p>6 A. Because he responded that he 7 wasn't able to respond to Phillip because 8 of these stress issues.</p> <p>9 Q. What would your response be if I 10 told you that Mr. Cardwell was -- if I 11 told you that the leave of absence was 12 something that was put to Mr. Cardwell by 13 firm management as opposed to a leave of 14 absence that he himself had requested?</p> <p>15 MR. BIRENBOIM: Objection to 16 form.</p> <p>17 THE WITNESS: I was on the 18 management committee. I have no 19 recollection of that. Maybe someone 20 discussed it with him but not to my 21 knowledge.</p> <p>22 BY MR. JEFFRIES:</p> <p>23 Q. With respect to the meeting -- 24 actually withdrawn.</p> <p>25 Have you yourself seen any</p> |

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| <p style="text-align: right;">Page 230</p> <p>1 BICK - CONFIDENTIAL 2 documents indicating Mr. Cardwell's 3 request for a leave of absence? 4 A. I remember seeing one e-mail 5 where he was reporting in and saying that 6 he was unable to respond because something 7 to the effect that he was having a 8 difficult time.</p> <p>9 REDACTED [REDACTED] [REDACTED] [REDACTED]</p> <p>14 Q. And to the best of your 15 understanding, why did Mr. Cardwell file a 16 complaint with EEOC?</p> <p>17 MR. BIRENBOIM: Objection to 18 form, no foundation. This witness 19 doesn't know what Mr. Cardwell is 20 thinking but you can answer.</p> <p>21 MR. JEFFRIES: The witness 22 testified as having reviewed the 23 complaints. I'm asking him to answer 24 based off that.</p> <p>25 THE WITNESS: He was alleging</p> | <p style="text-align: right;">Page 232</p> <p>1 BICK - CONFIDENTIAL 2 now the whole question? 3 BY MR. JEFFRIES: 4 Q. Sure. 5 Did you have any conversations 6 about Mr. Cardwell's administrative 7 complaints when he was working at the 8 firm? 9 A. Only in the context of talking to 10 management committee with counsel present. 11 Q. So it's your testimony that each 12 of the conversations that you had about 13 Mr. Cardwell's administrative complaints 14 were in the presence of counsel and with 15 the rest of the management committee; is 16 that your testimony? 17 A. Yes, that was the general 18 practice. 19 Q. And does that include e-mail 20 communications? 21 A. I believe so, yes. 22 Q. Did you have any conversations 23 about -- did you have any general 24 conversations with any other members of 25 the firm partnership with respect to</p> |
| <p style="text-align: right;">Page 231</p> <p>1 BICK - CONFIDENTIAL 2 racial discrimination and his 3 treatment while at the firm. 4 BY MR. JEFFRIES: 5 Q. And what else do you remember 6 about Mr. Cardwell's complaints, if 7 anything else? 8 A. No, no more details than that. 9 Q. Did you have any conversations 10 about Mr. Cardwell's administrative 11 complaints when Mr. Cardwell was working 12 at the firm? 13 A. Can you rephrase that? I didn't 14 hear the whole question. 15 Q. Did you have any conversations 16 about Mr. Cardwell's administrative 17 complaints when he was working at the 18 firm? 19 A. When you refer to administrative 20 complaints, what is that? 21 Q. Complaints to EEOC and NYS DHR. 22 MR. BIRENBOIM: You can answer 23 that yes or no with respect to 24 counsel. 25 THE WITNESS: Can you just repeat</p> | <p style="text-align: right;">Page 233</p> <p>1 BICK - CONFIDENTIAL 2 Mr. Cardwell's complaints, the EEOC 3 complaint and the NYS DHR complaint? 4 A. Not to my knowledge, no. 5 Q. A moment ago you mentioned 6 that -- you mentioned the term general 7 practice in connection with your 8 conversations with the management 9 committee and with respect to the general 10 practice in relation to Mr. Cardwell's 11 administrative complaint. Aside from 12 those types of conversations, did you have 13 any conversations with anyone else inside 14 of the firm with respect to Mr. Cardwell's 15 complaints? 16 A. No, I think I answered this 17 question before but the answer is no, to 18 my knowledge. 19 Q. And were you obligated to act on 20 those complaints in any way in your role 21 as a partner? 22 MR. BIRENBOIM: Objection to 23 form. If you understand that, you can 24 answer it. 25 THE WITNESS: How do you define</p> |

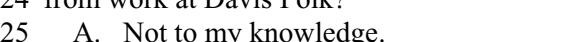
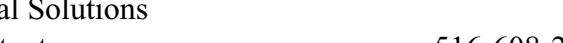
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| <p style="text-align: right;">Page 242</p> <p>1 BICK - CONFIDENTIAL 2 in his first rotation, if he got five 3reviews, who would make the decision as to 4characterize which reviews would be 5weighed more than others in the summary 6review process?</p> <p>7 A. Again, the process that you're 8describing is not how I see a review 9process. Just again at a high level in an 10annual review, there will be a reviewing 11partner assigned to give the associate the 12review. That reviewing partner will look 13at the written reviews submitted by 14lawyers who have worked for in this case 15Kaloma.</p> <p>16 And that review then is discussed 17at a practice group meeting, in this case 18let's say M&A, and other M&A partners are 19encouraged to participate and attend that 20meeting. Not everyone does, they have 21work clients or client conflicts but most 22do attend those meetings. So the 23particular associate with the reviewing 24partner leading the discussion is 25discussed.</p> | <p style="text-align: right;">Page 244</p> <p>1 BICK - CONFIDENTIAL 2 MR. JEFFRIES: Yes, you can go 3down a bit. 4BY MR. JEFFRIES: 5 Q. And do you see where it says in 6the second to last sentence in that 7paragraph, do you see the sentence that 8begins with "And despite meaningful"? 9 A. I'm sorry, David, I'm just 10reviewing these paragraphs here. 11 (Witness perusing document.) 12 Q. Again that's going to be the 13middle paragraph, second to last sentence 14I'm drawing your attention to. 15 A. Okay, sorry David, where do you 16want me to look? 17 Q. So middle paragraph. 18 A. The one that says Cardwell's 19performance, that paragraph? 20 Q. That paragraph, second to last 21sentence. 22 A. "And despite meaningful realtime 23feedback"? 24 Q. Yes, and that line reads, 25"Despite meaningful realtime feedback over</p> |
| <p style="text-align: right;">Page 243</p> <p>1 BICK - CONFIDENTIAL 2 Others can raise questions of 3input. People who have given written 4reviews can add in or answer questions or 5give more background. And from that, the 6group discusses what the message should be 7to the lawyer in question, and the 8reviewing partner is responsible for 9taking that consensus review from the 10group, summarizing it and giving it to the 11lawyer in question in their annual review. 12 Q. We'll come back to that. Do you 13see this document is dated December 5, 142017? 15 A. Actually where is that? 16 Q. Would you just turn to the second 17page? 18 A. Yes, I see a date, December 5, 192017. 20 Q. Now, if you turn to the next 21page, page 3, you're looking at the bottom 22of the page, do you see the paragraph that 23starts with Cardwell's performance? 24 MR. BIRENBOIM: Can we go down a 25bit?</p> | <p style="text-align: right;">Page 245</p> <p>1 BICK - CONFIDENTIAL 2 the course of years, together with 3repeated interventions and second chances, 4Cardwell's performance has failed to 5improve." 6 Do you see that? 7 A. I do, yes. 8 Q. So the firm told the NYS DHR that 9Cardwell received meaningful realtime 10feedback over the course of years; is that 11true? 12 A. I believe he did, yes. 13 Q. So what meaningful realtime 14feedback over the course of years did 15Mr. Cardwell receive in 2015? 16 MR. BIRENBOIM: Objection. 17 THE WITNESS: It varied. He just 18received to my knowledge his annual 19review from an M&A partner, but others 20had indicated that they had talked to 21him about his performance on various 22transactions. 23BY MR. JEFFRIES: 24 Q. So in regards to 2015, it's your 25testimony that the meaningful realtime</p> |

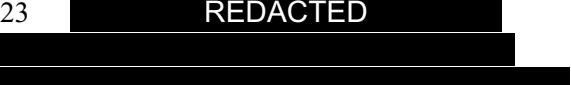
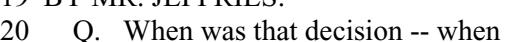
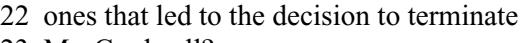
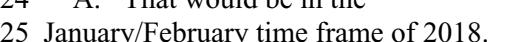
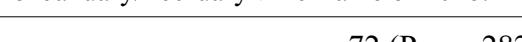
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| <p style="text-align: right;">Page 246</p> <p>1 BICK - CONFIDENTIAL 2 feedback that you're talking about 3 consisted of the summary review; is that 4 correct? 5 A. No, I said there was the summary 6 review by the M&A partner who gave him his 7 annual review in 2015 but to my 8 recollection, some of the reviews said 9 that they had discussed these issues with 10 Kaloma. 11 Q. Do you recall any of those 12 reviewers that said that they discussed -- 13 that they had taken up further discussion 14 with Mr. Cardwell with respect to any 15 performance issues or anything like that? 16 A. I don't remember name by name but 17 again, I reviewed all his reviews and that 18 is my recollection, that some of them did 19 discuss issues such as meeting deadlines 20 and responsiveness, attending to details. 21 These things came up from both associates 22 and partners. 23 Q. So in regards to 2015 reviews 24 that you may have been relying on for that 25 particular answer, did any of them</p> | <p style="text-align: right;">Page 248</p> <p>1 BICK - CONFIDENTIAL 2 seeing this from time to time. 3 Q. And is it your testimony that 4 these things were flagged in reviews that 5 you would have -- is it your testimony 6 these things were flagged with respect to 7 reviews in 2016? 8 A. Yes, based on -- certainly in 9 2016. I know Sophia sat him down and 10 discussed all of these things in detail so 11 that's very important realtime feedback. 12 And then I sat down and spoke to him in 13 June of 2016 and talked about the need to 14 focus on things that I thought were 15 correctable, if he worked at it, which is 16 responsiveness, that's within his control, 17 paying attention to details and care, 18 that's just rereading documents and making 19 sure that he made all the changes that 20 were necessary, and then making sure you 21 understood the assignment going in so that 22 if you have any questions, go back and ask 23 because if you wait too long, it leads to 24 him taking too much time and not meeting 25 deadlines. So again you can sort of</p> |
| <p style="text-align: right;">Page 247</p> <p>1 BICK - CONFIDENTIAL 2 describe Mr. Cardwell as a poor performer? 3 A. To my knowledge, no one used that 4 phrase, poor performer, in the context of 5 the review. 6 Q. And what about with respect to 7 2016? 8 REDACTED  . Again the same 13 words you see in this paragraph, 14 responsiveness to the team, to the 15 clients, care and attention to details, 16 asking questions at the beginning so he 17 fully understood what the assignment was, 18 because it would appear that he didn't 19 fully understand the assignment and that 20 led to one missing deadlines, and that the 21 work product wasn't always very good so it 22 would take time and effort for the 23 supervising senior lawyers to redo the 24 work, these things were flagged, not 25 always fall together but lawyers were</p> | <p style="text-align: right;">Page 249</p> <p>1 BICK - CONFIDENTIAL 2 manage that process and if you can work on 3 understanding the assignment and asking 4 questions, then hopefully that will 5 ameliorate the poor work product that was 6 turned in as the deadlines approached. 7 MR. JEFFRIES: I'm going to 8 introduce at this point tab 19. 9 (Exhibit 15, document entitled 10 M&A - Junior Associate Annual Review - 11 Highlights, marked for 12 identification.) 13 BY MR. JEFFRIES: 14 Q. Have you seen this document 15 before, Mr. Bick? 16 A. Yes, this is the 2015 review that 17 Bill Chudd as reviewing partner did. 18 Q. Do you see the header that 19 says -- well, was this document created by 20 the associate development department? 21 MR. BIRENBOIM: Objection to 22 form, foundation. If you know, you 23 can answer. 24 BY MR. JEFFRIES: 25 Q. This document right here.</p> |

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| <p style="text-align: right;">Page 254</p> <p>1 BICK - CONFIDENTIAL 2 correct? 3 MR. BIRENBOIM: Objection to 4 form, completely mischaracterizes the 5 document. You may answer. 6 THE WITNESS: No, I think it 7 highlights key issues and if I'm 8 reading this, this is not typical of a 9 well-performing associate. So this is 10 a constructive feedback where he needs 11 to be responsive, he has to improve 12 communication, he has to meet 13 deadlines, he needs to spend more time 14 with work product so he can get that 15 work into them in a timely fashion and 16 understand what he is doing. So this 17 is not a great review to get.</p> <p>18 BY MR. JEFFRIES:</p> <p>19 Q. In keeping with the things that 20 you've indicated, nowhere on this document 21 does it indicate that Mr. Cardwell is 22 behind his class; right?</p> <p>23 A. No, but I have -- I read the 24 underlying reviews myself so I know there 25 was a concern in that regard.</p> | <p style="text-align: right;">Page 256</p> <p>1 BICK - CONFIDENTIAL 2 As an employee of Davis Polk, 3 what position did Mr. Cardwell hold during 4 the time of his employment? 5 A. He was an associate in the 6 corporate group. 7 Q. Was Mr. Cardwell qualified for 8 that position? 9 MR. BIRENBOIM: Objection to 10 form.</p> <p>11 THE WITNESS: How do you mean 12 qualified? I mean he graduated from 13 law school, he got his JD, he was 14 admitted to the bar, so those are the 15 base qualifications. He received an 16 offer from Davis Polk to join on a 17 full-term basis.</p> <p>18 BY MR. JEFFRIES:</p> <p>19 Q. So on the basis of the things you 20 just mentioned, he was qualified for the 21 position of being an associate at Davis 22 Polk; correct?</p> <p>23 A. Based on the interview we had 24 with him and his time as a summer 25 associate, yes.</p> |
| <p style="text-align: right;">Page 255</p> <p>1 BICK - CONFIDENTIAL 2 Q. And on this particular document, 3 again nowhere does it state that 4 Mr. Cardwell received a negative review 5 from anyone at the firm, correct, looking 6 at the face of the document that's been 7 produced in evidence? 8 A. No, I disagree with that because 9 the areas for improvement suggest he did 10 not get a positive review and it could be 11 viewed as a negative review, which is why 12 these areas of constructive feedback, 13 areas that he should work on sort of 14 reflect that. 15 Q. Is there any language on this 16 review, aside from your interpretation of 17 other documents which are not subject to 18 this line of questioning, is there 19 anything on this particular document that 20 states -- is it written in any way that 21 Mr. Cardwell should receive a midyear 22 performance review? 23 A. It doesn't say he should receive 24 a midyear performance review, no. 25 Q. We can take this down.</p> | <p style="text-align: right;">Page 257</p> <p>1 BICK - CONFIDENTIAL 2 Q. What were Mr. Cardwell's job 3 responsibilities as an associate? 4 A. As a first year, he would do the 5 introductory basic work for corporate 6 transactions. That could range from 7 helping senior lawyers get a transaction 8 to signing, it can help with closing 9 documents, a lot of due diligence review, 10 both on the buy side and sell side for 11 various transactions, and just learning 12 the basic blocking and tackling of the 13 corporate transactions that you're working 14 on. 15 Q. Did Mr. Cardwell's job 16 responsibilities ever change as an 17 associate? 18 A. Not significantly because the 19 performance issues that we've been talking 20 about held him back from taking on 21 increasing senior roles and senior 22 responsibilities over the time period that 23 we've talked about. 24 Q. You indicated not significantly, 25 but did they change in any respect as he</p> |

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| <p style="text-align: right;">Page 258</p> <p>1 BICK - CONFIDENTIAL 2 continued in his time as an associate at 3 Davis Polk? 4 A. Yes, he was given more advanced 5 assignments to work on that he wouldn't 6 have gotten as a first-year associate, so 7 there was some evolution in terms of the 8 work that he was being exposed to. 9 Q. How long did Mr. Cardwell remain 10 as an associate at Davis Polk? 11 A. During the four-year period. 12 Q. Did Mr. Cardwell's position 13 change at any point during his employment? 14 A. Change in what way? 15 Q. Was he ever promoted from the 16 position of associate or demoted in any 17 way? 18 A. No, the only change I can think 19 of would be that he was told in February 20 of 2018 that he should look for a new job 21 and that he wouldn't be actively staffed 22 on corporate transactions in the M&A 23 group. So he was still an associate, 24 still getting paid but he's no longer 25 working on transactions and his job is to</p> | <p style="text-align: right;">Page 260</p> <p>1 BICK - CONFIDENTIAL 2 evaluations of Mr. Cardwell personally? 3 A. I gave him -- I sat down with him 4 and did an interim review in June of 2016. 5 Q. How did you evaluate 6 Mr. Cardwell's performance? 7 A. Exactly the way we discussed. I 8 said I reviewed review files from the 9 various lawyers, I've spoken to Sophia and 10 going forward to succeed at Davis Polk, 11 there was some key things he should focus 12 on and work on, again responsiveness to 13 other lawyers here and third parties, 14 paying careful attention to details, 15 meeting deadlines and improve the work 16 product.</p> <p>17 REDACTED </p> |
| <p style="text-align: right;">Page 259</p> <p>1 BICK - CONFIDENTIAL 2 look for a job. 3 Q. How did Mr. Cardwell perform as 4 an associate? 5 A. Well, again, we flagged the 6 issues. His critical issues were 7 responsiveness, responding to e-mails, 8 both from team members in Davis Polk and 9 being reachable and not responding to 10 clients and other third parties. Lack of 11 care or attention to details during the 12 work that he was doing. Not fully 13 understanding the assignment which led to 14 taking longer than would be expected for 15 the particular assignment and thus not 16 meeting deadlines, and then not 17 understanding the transaction in full, not 18 asking sufficient questions to inform 19 himself that led to sometimes poor work 20 product that needed to be redone by senior 21 people supervising him. So those were 22 issues that sort of were there from the 23 get-go and continued throughout his tenure 24 with Davis Polk. 25 Q. Did you conduct performance</p> | <p style="text-align: right;">Page 261</p> <p>1 BICK - CONFIDENTIAL 2 REDACTED  8 MR. JEFFRIES: I'm going off just 9 for one moment. 10 (Discussion off the record.) 11 BY MR. JEFFRIES: 12 Q. So what was the timing of those 13 performance evaluations or of your 14 performance evaluation with respect to 15 Mr. Cardwell's complaints? 16 MR. BIRENBOIM: Objection to 17 form, no foundation for complaints. 18 THE WITNESS: I'm not sure I 19 understand the question. What was the 20 timing of? 21 BY MR. JEFFRIES: 22 Q. What was the timing of the 23 evaluation that you gave Mr. Cardwell in 24 relation to the complaints that were made? 25 MR. BIRENBOIM: Objection.</p> |

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| <p>1 BICK - CONFIDENTIAL 2 BY MR. JEFFRIES: 3 Q. What was the time frame? 4 A. Again, you mean his EEOC 5 complaint and the New York State 6 complaint, is that what you're talking 7 about? 8 Q. Well, I'm talking about the 9 complaints that you mentioned that you had 10 become aware of throughout the course of 11 the litigation. You mentioned becoming 12 aware of a complaint made to Sharon Crane, 13 to the BAG group, to Mr. Goldberg, so -- 14 A. These individual complaints, not 15 the legal complaints, is that correct, is 16 my understanding correct? Those were 17 all -- 18 MR. BIRENBOIM: Wait, objection 19 to the form of the question. You may 20 answer. 21 THE WITNESS: My knowledge of 22 those complaints all came after I gave 23 my interim review to Kaloma. 24 BY MR. JEFFRIES: 25 Q. And again, how did your knowledge</p> | <p>Page 262</p> <p>1 BICK - CONFIDENTIAL 2 In particular, what I hadn't 3 heard about before in particular was the 4 performance in capital markets and that 5 rotation from October of 2015 through 6 April 1, 2016 that Sophia had talked to 7 him about, associate development was aware 8 of. So I was very concerned that these 9 were some significant performance issues 10 and wanted to get more information and 11 talk to her about it. 12 Q. During Mr. Cardwell's employment, 13 did you ever wonder if any of 14 Mr. Cardwell's performance reviews were 15 impacted by his complaints? 16 MR. BIRENBOIM: Objection to 17 form, no foundation he knew about 18 complaints before the legal papers 19 were filed. You may answer. 20 THE WITNESS: Because I wasn't 21 aware of the complaints that you're 22 talking about, it didn't impact my 23 interim review. 24 BY MR. JEFFRIES: 25 Q. How did Mr. Cardwell's</p> |
| <p>1 BICK - CONFIDENTIAL 2 of those complaints come about? 3 MR. BIRENBOIM: Objection, asked 4 and answered. You can answer again if 5 you wish. 6 THE WITNESS: I learned through 7 discussions at the management 8 committee and outside counsel or 9 general counsel's office in that time 10 frame after the EEOC complaint. 11 BY MR. JEFFRIES: 12 Q. And you mentioned a review that 13 you yourself had performed of 14 Mr. Cardwell. Do you remember that? 15 A. Yes. 16 Q. How did that review come about? 17 A. I think we talked about this 18 before but I had a meeting with members of 19 associate development in June where we 20 were looking at professional development 21 of Black American associates in the 22 corporate department. There was a slide 23 dedicated to Kaloma that flagged several 24 issues that caught my attention. We had 25 more discussion.</p> | <p>Page 263</p> <p>1 BICK - CONFIDENTIAL 2 performance compare to the performance of 3 other employees in Mr. Cardwell's class? 4 MR. BIRENBOIM: What time period? 5 BY MR. JEFFRIES: 6 Q. Well, relative to each period of 7 time during which, Mr. Bick, you would 8 have been evaluating him. So in relation 9 to his class, how would you have assessed 10 his performance in relation to his 11 classmates? 12 A. I think each reviewing lawyer 13 that I looked at would have a slightly 14 different assessment but I, looking at all 15 of the reviews from the beginning that he 16 had received, the submissions from all 17 lawyers, I thought at this time I gave the 18 interim review that he was performing at a 19 level of below his peers in 2014. And it 20 was he was still young and still 21 developing and so he needed to focus on 22 these issues and start to make corrections 23 going forward so he wouldn't have this 24 become worse over time. 25 Q. Did anyone else have that opinion</p> |

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| <p style="text-align: right;">Page 270</p> <p>1 BICK - CONFIDENTIAL 2 between the two of you?</p> <p>3 A. I said that we would be giving 4 him an assignment with a partner in the 5 M&A group and he would work on that 6 assignment with that M&A partner until it 7 was completed. That M&A partner would be 8 spending time with him to make sure he 9 understood the transaction. The partner 10 would be paying attention to the issues 11 that we had identified for improvement 12 such as responsiveness, attention to 13 details, meeting deadlines and doing good 14 work.</p> <p>15 Once that assignment with the 16 partner was completed, we would find 17 another assignment and move on to the next 18 one and continue to work on those issues, 19 and that my goal was to find partners who 20 were good hands-on teachers where he could 21 learn a lot from them and they were 22 willing to help him directly.</p> <p>23 Q. So it's your testimony that you 24 told him it was a plan designed to improve 25 his performance; is that correct?</p> | <p style="text-align: right;">Page 272</p> <p>1 BICK - CONFIDENTIAL 2 feedback to him on a very timely basis so 3 he could continue to improve.</p> <p>4 Q. So is it your understanding that 5 Mr. Cardwell's meeting with Tom Reid and 6 Len Kreyzin in March was related to his 7 poor performance?</p> <p>8 MR. BIRENBOIM: Objection to 9 form, mischaracterizes his testimony.</p> <p>10 THE WITNESS: No, I think the 11 meeting in part was driven by his not 12 getting a lot of work in the three- or 13 four-month period we talked about at 14 the end of 2016 and the first few 15 months of 2017.</p> <p>16 BY MR. JEFFRIES:</p> <p>17 Q. And his complaint at the time; 18 correct?</p> <p>19 MR. BIRENBOIM: Objection to 20 form, mischaracterizes the record.</p> <p>21 THE WITNESS: I'm not aware of 22 the complaint. In my mind it was 23 driven by the lack of work.</p> <p>24 BY MR. JEFFRIES:</p> <p>25 Q. Well, Mr. Cardwell himself</p> |
| <p style="text-align: right;">Page 271</p> <p>1 BICK - CONFIDENTIAL 2 A. Just what I said, I think I 3 explained what I told him.</p> <p>4 Q. With respect to what you said, is 5 it your understanding the takeaway he 6 would have had was that it was a plan to 7 improve his performance, or did you at any 8 point indicate to him that was the 9 specific thrust of the work plan that you 10 were explaining to him?</p> <p>11 A. Yes, I told him that he would be 12 working with partners I thought were very 13 good teachers, with young lawyers and they 14 would be working with him directly so he 15 wouldn't be working with I'll call it a 16 senior lawyer between him and the partner. 17 They would be paying attention and trying 18 to give him -- review his work product, 19 give him realtime feedback that he was 20 very keen to get, and they knew about and 21 would focus on the issues that we had 22 alerted to him that he needed to be 23 working on. So if they felt he was not 24 being responsive or not paying attention 25 to detail, they would try to give that</p> | <p style="text-align: right;">Page 273</p> <p>1 BICK - CONFIDENTIAL 2 certainly had opinions about why he wasn't 3 getting work and those opinions were 4 expressed in the meeting with Tom Reid and 5 Len Kreyzin; right?</p> <p>6 MR. BIRENBOIM: Objection to 7 form.</p> <p>8 THE WITNESS: If you could be 9 more clear about what his objections 10 were based on, I could be maybe more 11 responsive.</p> <p>12 BY MR. JEFFRIES:</p> <p>13 REDACTED           <p>23 Q. Was Mr. Cardwell ever suspended 24 from work at Davis Polk?</p> <p>25 A. Not to my knowledge.</p> </p> |

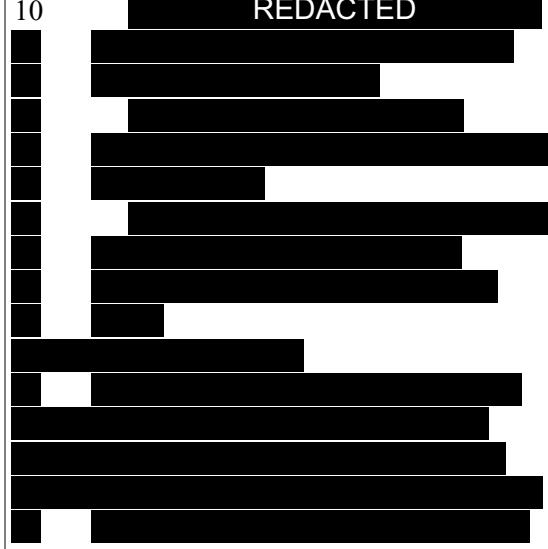
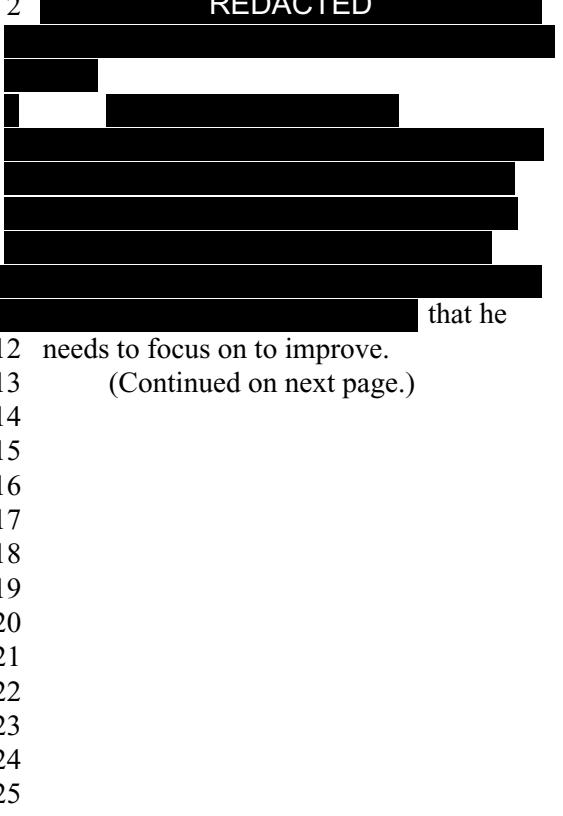
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| <p style="text-align: right;">Page 282</p> <p>1 BICK - CONFIDENTIAL 2 BY MR. JEFFRIES: 3 Q. Based on what you know about 4 Mr. Cardwell's reviews, what processes did 5 the M&A partners follow in terms of 6 deciding which reviews should be given 7 more weight than others? 8 A. Again, based on my just answered 9 question he was discussed, it depends on 10 what time period. If you want to look at 11 2016, Len Kreynin was the reviewing 12 partner leading the discussion. He had 13 gathered up the written reviews and 14 summarized them for the group and there 15 was a discussion by the group. Again, 16 there's no formulaic weighting process. 17 Again, it's just a discussion here of the 18 issues Kaloma has and what message do we 19 want to give to him. 20 Q. Did Len Kreynin decide that 21 Mr. Cardwell should receive a midyear 22 review? 23 A. No, that's part of the consensus 24 review process, whether the associate, 25 based on the performance of feedback they</p> | <p style="text-align: right;">Page 284</p> <p>1 BICK - CONFIDENTIAL 2 successful at Davis Polk. 3 Q. Is Mr. Cardwell still employed at 4 Davis Polk? 5 A. He is not. 6 Q. And when was Mr. Cardwell 7 terminated? 8 A. I believe it was August of 2018. 9 Q. What's the earliest moment that 10 you thought Mr. Cardwell might be 11 terminated for poor performance? 12 MR. BIRENBOIM: Objection to 13 form. You may answer if you recall. 14 THE WITNESS: In fall of 2016 and 15 ultimately in obviously 16 January/February time frame of 2017. 17 BY MR. JEFFRIES: 18 Q. And why did you have that -- 19 A. I'm sorry, the fall of 2017 and 20 January/February 2018. 21 Q. So not the fall of 2016; correct? 22 A. No, not before. 23 REDACTED  </p> |
| <p style="text-align: right;">Page 283</p> <p>1 BICK - CONFIDENTIAL 2 are going to get and the particular 3 constructive feedback or goals we want to 4 see them working on, the group on a 5 consensus basis decides whether that 6 should be a midyear review. In 2016, the 7 consensus was that given these issues 8 regarding responsiveness, attention to 9 details, understanding assignments, 10 meeting deadlines and in some cases poor 11 work product, the consensus was that he 12 should be given a midyear review in 2017. 13 Q. During Mr. Cardwell's employment, 14 did you see any documents that stated that 15 Mr. Cardwell knew how he was performing? 16 A. Did I see any documents that he 17 knew? Other than that he received the 18 reviews with these people, with these 19 goals, so I would have thought that based 20 on the reviews that Bill Chudd gave to 21 him, that Sophia gave to him on capital 22 markets, that I did on the interim basis 23 and that Len gave him, in my mind he 24 should have had a pretty good idea of the 25 issues that he needed to work on to be</p> | <p style="text-align: right;">Page 285</p> <p>1 BICK - CONFIDENTIAL REDACTED                        <img alt="Redacted content" data-bbox="535 6435 855 645</p> |

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| <p>1 BICK - CONFIDENTIAL</p> <p>2 Q. And ultimately who made the 3 decision to terminate Mr. Cardwell?</p> <p>4 A. I think it was a group 5 discussion. It would be certainly 6 management committee because of the EEOC 7 complaint and focusing on impact of 8 termination on those proceedings, and then 9 also getting consensus from a handful of 10 people, staffing partners, Louis Goldberg, 11 Oliver, who had given him the reviews,</p> <p>12 REDACTED</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>16 Q. With respect to specific 17 individuals, I heard you mention the 18 management committee, Goldberg and 19 staffing partners. So would that be 20 Harold Birnbaum; correct?</p> <p>21 A. Yes, Harold and I believe Brian 22 Wolfe.</p> <p>23 Q. And with respect to management 24 committee, would that conversation or 25 would that input related to terminating</p> | <p>Page 286</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 [REDACTED]</p> <p>3</p> <p>4 A. Yes, we have talked to other 5 lawyers and lawyers do get told by us that 6 based on performance, you need to look for 7 another job.</p> <p>8 Q. Between 2014 and 2018, were any 9 other associates terminated for the same 10 reason as Mr. Cardwell, specifically 11 performance as you mentioned?</p> <p>12 A. I don't have a specific list. I 13 couldn't give you names. I don't 14 recollect.</p> <p>15 Q. Who would have that information, 16 who would have that list of other 17 associates that would have been terminated 18 during the years of 2014 and 2018 for the 19 same reason as Mr. Cardwell?</p> <p>20 A. You'd have to look at their 21 written reviews where that message would 22 be delivered.</p> <p>23 Q. So is that to say there's not an 24 individual that would have knowledge 25 related to those occurrences by virtue of</p> |
| <p>1 BICK - CONFIDENTIAL</p> <p>2 Mr. Cardwell have involved input from 3 Mr. Tom Reid?</p> <p>4 A. Yes, it would have been Tom Reid 5 and Jim Rouhandeh.</p> <p>6 Q. And what about any other M&A 7 partners, would there have been any other 8 M&A partners who he worked with that gave 9 input as to the decision to terminate 10 Mr. Cardwell?</p> <p>11 A. Not to my recollection.</p> <p>12 Q. How was the termination decision 13 communicated to Mr. Cardwell?</p> <p>14 A. I believe Louis Goldberg, Oliver 15 Smith followed up on the official 16 performance review they gave him in 17 January with a follow-on message in 18 February.</p> <p>19 REDACTED</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>Page 287</p> <p>1 BICK - CONFIDENTIAL</p> <p>2 their role within the firm?</p> <p>3 A. Could you rephrase the question?</p> <p>4 You said a lot there. I didn't follow it 5 all.</p> <p>6 Q. Who can you think of that would 7 have knowledge of that list by virtue of 8 their role within the firm?</p> <p>9 A. It's in the HR personnel files 10 for reviews. If the lawyer is given a 11 message that they need to go get a job and 12 leave the firm, that usually would be in 13 the review files as the message is given.</p> <p>14 Q. So what steps normally precede 15 the firm terminating an associate for poor 16 performance?</p> <p>17 A. No specific steps.</p> <p>18 Q. How long is an associate 19 permitted to remain employed at the firm 20 following a negative performance review?</p> <p>21 MR. BIRENBOIM: Objection to 22 form.</p> <p>23 THE WITNESS: It depends on the 24 circumstances. It can vary but 25 generally the range would be three to</p> |

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| <p style="text-align: right;">Page 290</p> <p>1 BICK - CONFIDENTIAL 2 six months. 3 BY MR. JEFFRIES: 4 Q. How long is an associate 5 permitted to remain employed at the firm 6 following a performance review where they 7 are rated as behind their peers? 8 MR. BIRENBOIM: Objection to 9 form, no foundation, mischaracterizes 10 the record. You may answer. 11 THE WITNESS: No difference. 12 BY MR. JEFFRIES: 13 Q. So that would again be three to 14 six months; is that correct? 15 A. Somewhere in that range, can be 16 longer. 17 Q. Are you aware of associates 18 remaining employed at the firm despite 19 receiving multiple negative reviews in a 20 prior review period? 21 A. I'd have to look at the 22 individual cases. I can't remember 23 specific cases. 24 Q. Well, is this something that you 25 have a personal awareness of ever</p> | <p style="text-align: right;">Page 292</p> <p>1 BICK - CONFIDENTIAL 2 Mr. Cardwell a midyear review in June of 3 2016? 4 A. He didn't get a midyear review. 5 Q. So your testimony is that 6 Mr. Cardwell did not receive a midyear 7 review in 2016? 8 A. I view it as an interim review. 9 In the fall of 2015 he was not told he was 10 going to be given a midyear review, which 11 is I think is a term of art, that says in 12 connection with your annual review, here 13 are the performance issues we want you to 14 work on and we're going to touch base six 15 months later in a midyear review around 16 May or June. 17 The interim review I gave to 18 Kaloma was based on the information I got 19 in my meeting with associate development 20 in June and it caused me great concern. I 21 did talk to Sophia, I asked for review 22 forms to be filled by people who had 23 worked with him recently. And then based 24 on all of that, I thought it was important 25 to sit down and give him that input. I</p> |
| <p style="text-align: right;">Page 291</p> <p>1 BICK - CONFIDENTIAL 2 happening? 3 A. People have gotten negative 4 reviews in the sense that they have to 5 work on specific areas and remain 6 employed, so yes. 7 Q. Are you aware of associates 8 remaining employed at the firm despite 9 receiving behind ratings in performance 10 reviews in a prior review period? 11 MR. BIRENBOIM: Objection to 12 form. 13 THE WITNESS: Again, I don't have 14 any details. 15 BY MR. JEFFRIES: 16 Q. Are there any 17 nonperformance-based reviews -- excuse me, 18 are there any nonperformance-based reasons 19 that can contribute to an associate being 20 rated behind other associates in their 21 class? 22 A. Not to my knowledge. It's all 23 based on performance relative to other 24 members in their class. 25 Q. Who made the decision to give</p> | <p style="text-align: right;">Page 293</p> <p>1 BICK - CONFIDENTIAL 2 know that he wanted realtime feedback and 3 REDACTED [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. 14 Q. Are you aware of Sophia Hudson 15 giving Mr. Cardwell a review? 16 A. Yes, not a formal written review 17 in the February time frame. She sat down 18 and spoke to him and gave him very 19 concrete feedback about her experience 20 working with him and the issues he needed 21 to focus on. 22 Q. Are you aware of her giving him a 23 review in 2016 at any time? 24 A. Yes, we just talked about that. 25 At the end of his capital markets</p> |

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| <p style="text-align: right;">Page 314</p> <p>1 BICK - CONFIDENTIAL 2 feedback. So in some cases maybe the 3 performance is very poor. In some 4 cases it's a very good associate, they 5 just need to work on a particular area 6 and we want to see progress. Some 7 people might view it as stigma. 8 Others, I don't think they do. It's 9 all part of the review process.</p> <p>10 BY MR. JEFFRIES:</p> <p>11 Q. And again, it's your testimony 12 that Mr. Cardwell asked the associate 13 development department for midyear 14 feedback; correct?</p> <p>15 A. That is not my testimony. My 16 testimony is Kaloma asked for regular 17 realtime review on his work. And so this 18 review, this interim review I'm giving him 19 in June because again it's not part of the 20 annual review process. I didn't sit down 21 with the entire M&A group and review all 22 of these issues to deliver the group 23 consensus message that we've talked about 24 during the annual review process. It was 25 just an interim review and it had two</p> | <p style="text-align: right;">Page 316</p> <p>1 BICK - CONFIDENTIAL 2 improvements so by the time he gets to the 3 fall review, people could see that he's 4 working on each of these issues and see 5 continued improvement that some people saw 6 here.</p> <p>7 Q. When the firm decided to 8 terminate Mr. Cardwell, did they factor in 9 the June 2016 review, reviews rather?</p> <p>10 A. I don't think so. I mean in the 11 sense that we knew that he had performance 12 issues from when he started, but I think 13 in the times where we're taking a 14 determination not to continue with him and 15 that message in February to look for a new 16 job, that's more influenced by the work we 17 had done with him starting in May of 2017.</p> <p>18 Obviously, at a level prior 19 performance is a factor, we're aware of 20 that, but we're looking at is he making 21 any significant improvement in 2017 to be 22 operating as a third or fourth year 23 associate. And as a practical matter, we 24 didn't see any significant improvement and 25 ultimately that's what led us to the</p> |
| <p style="text-align: right;">Page 315</p> <p>1 BICK - CONFIDENTIAL 2 purposes. One, to go over again what 3 Sophia had talked about because there were 4 some serious performance issues and I 5 wanted to make sure he took them seriously 6 and worked on them as they are summarized 7 here; and two, I wanted to make sure I had 8 realtime review and input from the M&A 9 lawyers that he was working for starting 10 in April, May and early June. And it was 11 good that I did because John Amorosi had 12 had a good experience, Laura Turano had a 13 good experience and that was very helpful. 14 And I communicated to him and said that's 15 what he needs to do and that's what he 16 needs to accomplish, continue to do that. 17 And again as I said earlier, a lot of 18 these issues regarding responsiveness, 19 carefulness, attention to details, 20 understanding the transaction, meeting 21 deadlines, I believe those all to be 22 within his control. If he focused on them 23 and if he worked on them, he could improve 24 on each of those issues, so it was better 25 that he start to focus on them and make</p> | <p style="text-align: right;">Page 317</p> <p>1 BICK - CONFIDENTIAL 2 decision to terminate him because he's now 3 a rising fourth-year associate. 4 REDACTED  17 MR. JEFFRIES: Let's turn to tab 18 14 at this point in time. You can 19 take this down, Zach. 20 (Exhibit 17, document Bates 21 labeled DPW_SDNY-000140827, marked for 22 identification.) 23 MR. JEFFRIES: Can you enlarge 24 this a bit? 25 MR. BIRENBOIM: Zach, can you</p> |

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| 1 BICK 2 M&A lawyers who were working with him 3 because based on his prior discussions 4 asking for realtime feedback, I'm sure 5 he'd say what do people think about and I 6 would be remiss not to have an answer when 7 he asked that question if I said I didn't 8 get any feedback, I don't know. That 9 would have been a wrong outcome. 10 REDACTED  | Page 326 | 1 BICK 2 REDACTED  | Page 328 |
| 1 BICK 2 REDACTED  | Page 327 | 1 BICK 2 REDACTED  that he 12 needs to focus on to improve. 13 (Continued on next page.) 14 15 16 17 18 19 20 21 22 23 24 25 | Page 329 |

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